

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<p>JANE DOE 2 <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>DONALD J. TRUMP, in his official capacity as President of the United States, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Civil Action No. 17-cv-1597 (CKK)</p>
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**PLAINTIFFS' SUPPLEMENTAL RESPONSE TO  
GOVERNMENT'S NOTICE [DKT. 190]**

On October 30, 2017, this Court issued a preliminary injunction directing Defendants “to revert to the status quo with regard to accession and retention that existed before the issuance of the Presidential Memorandum.” Dkt. 60 at 2. On March 8, 2019, the government notified the Court that the Department of Defense intends, in direct violation of this order, to issue a directive implementing the Mattis Plan “in the near future.” Offering scant explanation, the government asserted that this Court’s preliminary injunction is no longer in effect, even though the D.C. Circuit has not issued its mandate and no court has stayed the injunction.

Late on March 12, the government issued Directive-type Memorandum (DTM)-19-004 (DTM), ordering the Department of Defense to “implement” the Mattis Plan. The DTM “[i]mplements the policy in the February 22, 2018 Secretary of Defense Memorandum and the February 2018 DoD Report and Recommendations on Military Service by Transgender Persons” and “[a]pproves updates to the separation processing guidance in DoD Instructions (DoDis) 1332.14 and 1332.30.” *See* Exh. A, at 1. Notwithstanding that the policy changes ordered by the DTM do not take effect until April 12, the DTM itself is an order that dramatically changes the status quo. The DTM reverses the current open service policy to provide that, as of April 12,

2019, all transgender persons (other than those who are currently serving and are “grandfathered”) may serve only in “their biological sex,” not their “preferred gender.” *Id.* Attachments to the DTM reaffirm the Mattis Plan’s discriminatory targeting of transgender persons and their broad exclusion from the military (excepting only those who qualify under the Plan’s limited “grandfather clause”). For example, Attachment 3 makes clear that any history of gender transition or intent to transition is disqualifying for military service. *See id.* Attach. 3, at 9 (“nonexempt individuals ... may not ... serve in their preferred gender”).

The issuance of an official order directing a change in the government’s policy regarding transgender service members violates the injunction in this case. While the injunction remains in effect and until the court of appeals issues its mandate, the government may not depart from the status quo or order any new policy inconsistent with that injunction. Plaintiffs are considering whether to seek rehearing, and the mandate of the court of appeals (if not extended) does not issue for 16 days. At stake here are the constitutional rights and livelihoods of thousands of prospective and current transgender servicemembers, as well as the authority of this Court. Neither Plaintiffs, nor the government, nor the public would benefit from permitting the government to bypass the normal judicial process, potentially resulting in a scenario where the government proceeds as if the injunction has been dissolved, but subsequent proceedings result in its reinstatement.

Plaintiffs’ constitutional interests in this case are weighty. Defendants are disregarding both those interests and the authority of this Court. They must not be permitted to cast aside the ordinary procedures that safeguard those constitutional interests, nor may they be permitted to usurp the Court’s jurisdiction to determine when its injunction has expired.

March 13, 2019

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